

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARDEN CITY BOXING CLUB, INC.,

USDS SDNY
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Plaintiff,

05 Civ. 8669 (JGK)

- against -

MEMORANDUM OPINION
AND ORDER

WALDO TORIBIO, et al.,

Defendants.

JOHN G. KOELTL, District Judge:

The plaintiff objects to the Magistrate Judge's Report and Recommendation filed July 9, 2008 in which the Magistrate Judge recommended, after an inquest on damages, that the Court determine that the damages the plaintiff had proved against Waldo Toribio and El Sabroson Restaurant, Inc. (the "Defaulting Defendants") was \$1,000. The Magistrate found that, although he directed the parties to submit proposed findings of fact and conclusions of law and any supporting evidence, the plaintiff had failed to submit any evidence. (Report and Recommendation 3.) The plaintiff objects that it had submitted evidence in connection with the original order to show cause for a default judgment before this Court. The plaintiff does not dispute that it never submitted that evidence to the Magistrate Judge in connection with the inquest, but argues that it assumed the evidence was in the record and was referred to the Magistrate Judge.

However, it was certainly reasonable for the Magistrate Judge to require the parties to submit any evidence to that Court and to reference that evidence in the Proposed Findings of Fact and Conclusions of Law and not to require the Magistrate Judge to sift through any evidence that had previously been submitted to this Court. The plaintiff does not dispute that it failed to do so. The plaintiff also failed to make any motion for reargument before the Magistrate Judge asking that the Court consider additional evidence that had not previously been submitted to it. The Proposed Findings of Fact and Conclusions of Law were devoid of any references to any evidence in the record, including any evidence submitted in connection with the original order to show cause for a default judgment. (Docket Nos. 22, 23.) There was also no support for or any claim for attorneys fees or costs and no specific amounts. The Proposed Findings of Fact and Conclusions of Law were a terse three-page conclusory set of propositions without evidentiary support.

Under the circumstances, the Court will adopt the Report and Recommendation of the Magistrate Judge and enter the Judgment recommended by the Magistrate Judge. The Court therefore overrules the objections and, considering the matter de novo, adopts the Report and Recommendation. The Court finds that the plaintiff is entitled to a damages award against the

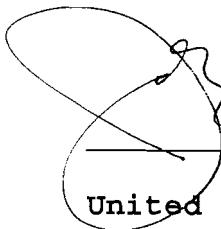
Defaulting Defendants jointly and severally in the amount of \$1,000.

CONCLUSION

The Court adopts the Report and Recommendation of Magistrate Judge Pitman. The Court directs that the Clerk enter Judgment in favor of the plaintiff and against the Defaulting Defendants, jointly and severally, in the amount of \$1,000, and close this case.

SO ORDERED.

Dated: New York, New York
 July 31, 2008



John G. Koeltl
United States District Judge